

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

JOSHUA GREEN,

A decorative vertical border element consisting of a series of stylized, interlocking loops or scrolls, resembling a traditional rope or a decorative flourish.

Plaintiff,

CIVIL ACTION NO. 5:15-CV-00208-RWS

V.

DIR TDCJ, LORIE DAVIS-DIRECTOR
TDCJ-CID,

Defendants.

**MEMORANDUM ORDER ADOPTING THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

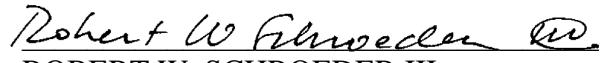
Petitioner Joshua Green, a prisoner currently confined at the Coffield Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Court ordered that this matter be referred to the Honorable Caroline Craven, United States Magistrate Judge, for consideration pursuant to applicable laws and orders of this Court. On October 10, 2017, the Magistrate Judge issued a Report and Recommendation (Docket No. 14) recommending that the petition be denied. Docket No. 14. Petitioner acknowledged receiving his copy of the Report and Recommendation on October 16, 2017. Docket No. 15. Petitioner did not file objections to the Report and Recommendation; therefore, this Court reviews the Report and Recommendation for clear error.

Upon review of the Magistrate Judge's finding, this Court finds that the findings and conclusions of the Magistrate Judge are correct. The Court agrees with the Magistrate Judge that petitioner has not met the standard for an ineffective assistance of counsel claim. Accordingly, the Magistrate Judge's Report is **ADOPTED** as the opinion of the Court.

Additionally, the Court finds that Petitioner is not entitled to a certificate of appealability. An appeal from a judgment denying post-conviction collateral relief may not proceed unless a judge issues a certificate of appealability. *See* 28 U.S.C. § 2253. The standard for a certificate of appealability requires the petitioner to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004). To make a substantial showing, the petitioner need not establish that he would prevail on the merits. Rather, he must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *See Slack*, 529 U.S. at 483-84. Any doubt regarding whether to grant a certificate of appealability should be resolved in favor of the petitioner, and the severity of the penalty may be considered in making this determination. *See Miller v. Johnson*, 200 F.3d 274, 280–281 (5th Cir.), *cert. denied*, 531 U.S. 849 (2000).

In this case, Petitioner has not shown that the issues raised by his claims are subject to debate among jurists of reason, and the questions presented are not worthy of encouragement to proceed further. Therefore, Petitioner has failed to make a sufficient showing to merit the issuance of a certificate of appealability. Accordingly, a certificate of appealability will not be issued.

SIGNED this 31st day of January, 2018.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE